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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,247	02/07/2005	Rein Tammik	9300100-2001- -	9091
<div>7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151</div>			<div>EXAMINER MERCIER, MELISSA S</div>	
			<div>ART UNIT 1615</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 07/25/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,247

Applicant(s)

TAMMIK, REIN

Examiner

Melissa S. Mercier

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-52, 54-58 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 50-52, 54-58, 67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Summary

Receipt of Applicants Remarks and Amended Claims filed on April 27, 2007 is acknowledged. Claims 50-52, 54-58, and 67 are pending in this application. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi et al. (US Patent 5,968,531) in view of Kimura et al. (US Patent 5,522,923).

Miyoshi discloses "a particulate composite powder wherein each composite powder particle comprises a substrate particle surrounded by fine particles of metal oxide bound to the surface of the substrate particle by a binding agent containing at least one of metallic soap and wax, the amount of fine particles of metal oxide being between 10 and 30 wt % based on the total weight of substrate particles, fine particles of metal oxide and binding agent" (abstract). Titanium oxide is disclosed as the metal oxide used (column 1, lines 17-19). Additionally, "the substrate or core particles may be organic powders or inorganic powders of various shapes, including mica and synthetic fluorophlogopite mica" (column 3, lines 7-14).

Furthermore, "the fine particles of metal oxides are metal oxide particles having a mean particle size which is at most one-tenth of the mean particle size of the substrate particles. For use as UV screeners in cosmetic compositions, micronized particles of metal oxides must have an average particle size of less than 100 nm to be effective in minimizing the penetration of UV rays" (column 3, lines 21-27).

Additionally, the particles may be used to formulate non-pressed powders, lipsticks, creams, lotions and aerosol sprays (column 8, lines 51-55).

Miyoshi does not disclose the use of Fe_2O_3 or a mixture of $\text{Fe}_2\text{O}_3/\text{TiO}_2$ to coat the mica particles.

Kimura discloses a red pigment used in cosmetic formulations comprising an iron oxide plate type particle (abstract). The plate type particle may be mica and is coated with iron oxide (column 2, lines 46-55). The optical thickness of the iron oxide layer is 60-350nm (column 3, lines 6-9).

The instant claims differ from the reference only in the specific thickness of the coating agent. However, It would have been deemed prima Facie obvious to one having ordinary skill in the art at the time of the invention to optimize the thickness of the layer in order to provide a composition with desired UV protection sought. Determination of a specific percentage having the optimum therapeutic effect is well within the level of one having ordinary skill in the art, and the artisan would be motivated to determine optimum amounts to get the maximum effect of the active compounds. Therefore, the invention as Whole has been prima face obvious to one of ordinary skill in the art at the time the invention was made.

Claims 50-52, 54-55, 57-58 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa et al. (EP 0 998 901 A1). in view of Kimura et al. (US Patent 5,522,923).

Ogawa discloses, a makeup cosmetic composition comprising photo chromic titanium oxide coated mica (abstract). Ogawa further discloses, "the layer thickness of titanium oxide layer, is adjusted in order that color tone of the interference color that is generated by titanium oxide layer may show different color with the objected color" (paragraph 0011) and "the layer thickness of titanium oxide layer is adjusted in order that color tone of the interference color that is generated by titanium oxide layer may shows a complementary color or color gamut in the vicinity of the complementary color of the object color " (paragraph 0012).

The titanium oxide coated mica is present in the amount of 0.1-30% (paragraph 0017).

The cosmetic composition further may comprise "water; powders, including various blue pigments; oils, including hydrocarbon oils; surfactants; lower alcohols; polyhydroxy alcohols, humectants, antiseptics, polymers, antioxidants, ultraviolet absorbents, and fragrances" (paragraph 0044).

Ogawa does not disclose the use of Fe_2O_3 or a mixture of $\text{Fe}_2\text{O}_3/\text{TiO}_2$ to coat the mica particles.

Kimura discloses a red pigment used in cosmetic formulations comprising an iron oxide plate type particle (abstract). The plate type particle may be mica and is coated with iron oxide (column 2, lines 46-55). The optical thickness of the iron oxide layer is 60-350nm (column 3, lines 6-9).

The instant claims differ from the reference only in the specific thickness of the coating agent. However, It would have been deemed prima Facie obvious to one having ordinary skill in the art at the time of the invention to optimize the thickness of the layer in order to provide a composition with desired UV protection sought. Determination of a specific percentage having the optimum therapeutic effect is well within the level of one having ordinary skill in the art, and the artisan would be motivated to determine optimum amounts to get the maximum effect of the active compounds. Therefore, the invention as Whole has been prima face obvious to one of ordinary skill in the art at the time the invention was made.

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi et al. (US Patent 5,968,531) in view of Kimura et al. (US Patent 5,522,923) and further in view of Haning et al. (US Patent 6,042,619).

The combined teachings of Miyoshi and Kimura are discussed above and applied in the same manner.

Miyoshi and Kimura do not disclose the use of pearlescent optional ingredients.

Haning discloses a hair treatment composition comprising metal oxide coated particles and optional pearlescent ingredients including ethylene glycol distearate; preservatives such as benzyl alcohol, methyl paraben, propyl paraben and imidazolidinyl urea (column 6, lines 15-18).

It is generally considered to be prime facie obvious to combine compounds each of which is taught by the prior art to be useful for the same purpose in order to form a composition that is to be used for an identical purpose. The motivation for combining them flows from their having been used individually in the prior art, and from them being recognized in the prior art as useful for the same purpose. As shown by the recited teachings, instant claims are no more than the combination of conventional components of cosmetic formulations. It therefore follows that the instant claims define prime facie obvious subject matter. Cf. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

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Claims 50-52, 54-55, 57-58 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa et al. (EP 0 998 901 A1). in view of Kimura et al. (US Patent 5,522,923) and further in view of Haning et al. (US Patent 6,042,619).

The combined teachings of Ogawa and Kimura are discussed above and applied in the same manner.

Ogawa and Kimura do not disclose the use of pearlescent optional ingredients.

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It is generally considered to be prime facie obvious to combine compounds each of which is taught by the prior art to be useful for the same purpose in order to form a composition that is to be used for an identical purpose. The motivation for combining them flows from their having been used individually in the prior art, and from them being recognized in the prior art as useful for the same purpose. As shown by the recited teachings, instant claims are no more than the combination of conventional components of cosmetic formulations. It therefore follows that the instant claims define prime facie obvious subject matter. Cf. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

Response to Arguments


Applicant's arguments with respect to claim 67 have been considered but are moot in view of the new ground(s) of rejection.

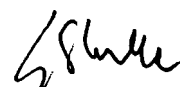
Conclusion

No claims are allowable. Due to the new grounds of Rejection, this office action is made Non-Final. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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